TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 196

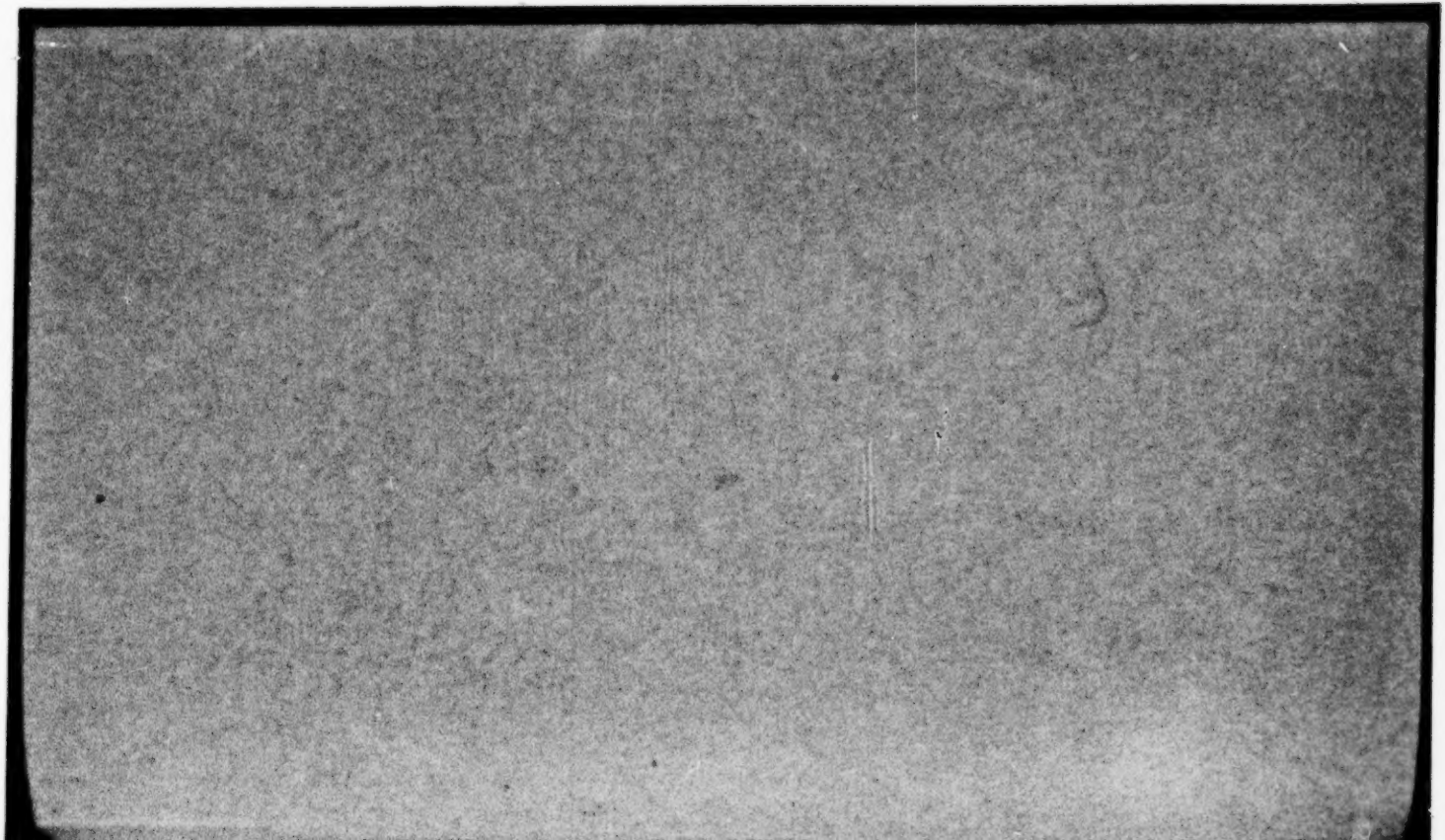
AUGUSTIN SEGUROLA AND MANUEL SANTIAGO, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

(28,647)



(32,547)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 195

AUGUSTIN SEGUROLA AND MANUEL SANTIAGO, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

	Original	Print
Proceedings in the United States circuit court of appeals, first circuit	1	1
Writ of error and return	1	1
Record from the district court of the United States, district of Porto Rico	3	2
Information	3	3
Order re information, etc	5	4
Verdict	5	5
Motion for new trial	5	5
Judgment	7	7
Petition for writ of error	8	8
Order allowing writ of error	9	9
Assignment of errors	9	9
Supersedeas bonds on writ of error (omitted in printing)	11	
Objection to granting of writ of error	16	11

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 14, 1927

	Original	Print
Citation and service (omitted in printing)	17	
Motion and order for enlargement of time, etc.	18	12
Notice of submission of transcript of testimony and order approving same	19	13
Transcript of testimony	19	14
Testimony of Alfonso Ceballos	19	14
Ismael Colon	21	16
Jose Alvarez	22	17
John T. Barrett	25	19
William Brindle, Jr.	27	21
Manuel Santiago	30	25
Alfonso Ceballos (recalled)	34	28
Praecipe for transcript of record	35	29
Order extending time	36	30
Bill of exceptions	36	30
Caption	36	30
Testimony of Alfonso Ceballos	37	31
William Brindle, Jr.	60	54
Manuel Santiago	61	55
Ismael Colon	59	52
Jose Alvarez	60	53
Motion for new trial	52	46
Order approving bill of exceptions	54	48
Order enlarging time	54	48
Supplemental praecipe for transcript of record	55	49
Clerk's certificate (omitted in printing)	56	
Opinion, Anderson, J.	57	49
Dissenting opinion, Bingham, J.	62	54
Motion for rehearing (omitted in printing)	66	
Judgment	71	58
Order denying rehearing	71	58
Clerk's certificate (omitted in printing)	72	
Order allowing certiorari	73	59

[fols. a-1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1925

No. 1922

AGUSTIN SEGUROLA et al., Defendants, Plaintiffs in Error,

v.

UNITED STATES OF AMERICA, Defendant in Error

WRIT OF ERROR AND RETURN

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Judge of the District Court of the United States for the District of Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States, plaintiff, and Agustin Segurola and Manuel Santiago, defendants, a manifest error hath happened to the great damage of the said defendants, Agustin Segurola and Manuel Santiago, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the First Circuit, together with this writ, so that you have the same at the City of Boston, [fol 2] Mass., on the 20th of September, 1925, in the said Circuit Court of Appeals, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, the twenty second day of July,

in the year of our Lord one thousand nine hundred and twenty five.

Antonio Aguayo, Clerk U. S. District Court for Porto Rico.

Allowed by Ira K. Wells, U. S. District Judge.

District Court of the United States, District of Porto Rico, ss.

Return of District Court on Writ of Error

And now, here, the Judge of the District Court of the United States in and for the District of Porto Rico, makes return of this writ by annexing hereto and sending herewith, under seal of the District Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the United States Circuit Court of Appeals for the First Circuit, as within commanded.

In testimony whereof, I, Antonio Aguayo, clerk of the District Court of the United States for Porto Rico, have hereto set my hand and the seal of said court this sixteenth day of December, A. D. 1925.

Antonio Aguayo, Clerk District Court United States for Porto Rico. (Seal.)

[fol. 3] In United States District Court, District of Porto Rico

No. 3409, Criminal

Information—Filed in Circuit Court of Appeals December 22, 1925

The United States of America,
Judicial District of Porto Rico, ss:

In the District Court of the United States Within and for the Division and District Aforesaid at the May Term of said Court, in the Year of our Lord One Thousand Nine Hundred Twenty-five

John L. Gay, Attorney of the United States for the Judicial District of Porto Rico, who in this behalf prosecutes in the name of the United States, and for the United States, comes here into said Court on this 5th day of June, in the year of our Lord one thousand nine hundred twenty-five, in his own proper person and for the United States gives the said Court here to understand and be informed that Agustin Segurola, Manuel Santiago, late of the Division and District aforesaid, heretofore, to wit, on or about the 26th day of May, in the year of our Lord one thousand nine hundred twenty five, at Carolina, Porto Rico, in the Division and District aforesaid, and within the jurisdiction of this Court, in violation of Sec. 3 of Title II of the National Prohibition Act, did knowingly, willfully and unlawfully have in their possession, not in their private dwelling, certain intoxicating liquors, to wit, eleven (11) quart bottles of Gordon Dry Gin, forty three (43) quart bottles of Black & White Whisky, fifty six (56) quart bottles of Vermouth Cinzano, fifteen (15) half pint bottles of Brandy Hennessy, forty two (42) pint bottles of Vermouth Cinzano and twenty one (21) pint bottles of Vermouth Martini, said liquor containing one half of one per centum or more of alcohol by volume and fit for beverage purposes, con-
[fol. 4] trary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Second Count. And the United States Attorney further gives the Court to understand and be informed that the said Agustin Segurola and Manuel Santiago, heretofore, to wit, on or about the 26th day of May, 1925, at Carolina, Porto Rico, in the division and district aforesaid and within the jurisdiction of this court, in violation of Sec. 3 of Title II of the National Prohibition Act, did knowingly, willfully and unlawfully transport in a Buick Roadster No. 3908, Motor No. 1194086, on the public highways of Porto Rico, certain intoxicating liquors, to wit, eleven (11) quart bottles of Gordin Dry Gin, forty three (43) quart bottles Black and White Whisky, fifty six (56) quart bottles of Vermouth Cinzano, fifteen (15) half pint bottles of Hennessy Brandy, forty two (42) pint bottles of Vermouth Cinzano and twenty one (21) pint bottles of Vermouth Martini, said liquor containing one-half of one per centum or more of alcohol by volume and fit for beverage purposes, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

And the United States Attorney further gives the Court to understand and be informed that an affidavit was made against the defendants aforesaid before a United States Commissioner charging them with the commission of the offenses set forth in this information, a hearing held thereon and probable cause found against the said defendants, all of which is shown by the Commissioner's record on file in this Court.

Wherefore, said attorney, in behalf of the United States, prays the consideration of the Court here in the premises, and that due process of law may be awarded against the said Agustin Segurola and Manuel Santiago, in this behalf, to make answer to the United States touching and concerning the premises aforesaid.

John L. Gay, United States Attorney for the Judicial District of Porto Rico.

In United States District Court

[fol. 5] Order as Information, etc.—July 6, 1925

The defendants appeared represented by the Hon. Salvador Mestre as their attorney, and waived the reading of

the information and entered a plea of not guilty as to each of the defendants.

The Commissioner's bond is ordered continued in force and a fee of $5 charged and taxed against each defendant as provided by law. The attorney for the defendants requested that a copy of the information be furnished the defendants free of charge, which request is refused for the reason that I know of no law requiring the same. The defendants and the attorney for the defendants are free at any time to examine the information, which is now in court, and to have copies thereof made at any time, as provided by law; to which each of the defendants then and there took exception.

Done and ordered in open court, at San Juan, Porto Rico, this sixth day of July, A. D. 1925.

Ira K. Wells, Judge.

In United States District Court

Verdict—Filed July 8, 1925

We, the jury, find the defendants guilty as charged in the Information.

J. A. Bezouska, Foreman.

In United States District Court

Motion for New Trial—Filed July 13, 1925

Come now the defendants in the above entitled cause and move the court for a new trial, for the following reasons, to wit:

1. Because the defendants were not furnished, upon application for same, with a copy of the accusation against them in said cause, as provided by law, to which defendants seasonably noted an exception.

2. Because the defendants were held to answer for a [fol. 6] criminal offense in the above entitled cause and

tried thereon without due process of law, to which defendants noted an exception.

3. Because the verdict of guilty rendered by the jury in the above entitled cause at the trial of same was contrary to the law and the evidence.

4. Because the court refused to allow counsel for the defendants to cross-examine the witness for the prosecution, police officer Ceballos, as to the source of the information testified by him to have been received to the effect that the approaching automobile in which defendants were was being used at that time by defendants in transporting liquors in violation of the Federal Prohibition Law, to which refusal attorneys for defendants noted an exception.

5. Because the court admitted as evidence at the trial of said cause the liquors alleged to have been seized by the police officer Ceballos, the court having previously at the trial refused to allow the attorney for the defendant to cross-examine the said officer Ceballos as to the source of the information testified by him to have been received that the defendants were approaching Carolina in an automobile used by them in transporting at the time liquors in violation of the Federal Prohibition Law, to which defendants noted an exception.

6. Because the court admitted improper evidence at the trial against the defendants, to which defendants noted exceptions.

7. Because the court refused to admit proper evidence offered by defendants in their defense, to which refusal defendants noted exceptions.

8. Because the court allowed the United States Attorney, over the objection of the defendants' attorney, to cross examine the defendant Manuel Santiago as to matters not properly related to the direct examination, and not pertinent in any way to his defense, and to the prejudice of the said defendant, to which attorney for defendants noted an exception.

9. Because the court denied the motion of the defendants, made at the conclusion of the evidence for the prosecution,

[fol. 7] to oblige the United States Attorney to elect to proceed on the one or the other counts contained in the information, and not as to the other, to which denial the defendants noted an exception.

10. Because the defendants were placed in jeopardy and tried twice and convicted twice for the same offense.

11. And specifically as to the defendant Manuel Santiago there was insufficient evidence to justify a verdict of guilty on either count contained in the information.

Wherefore, the defendants pray that the court set aside the judgment, if same has been entered, and the verdict and grant a new trial to both defendants, or in the alternative as to the defendant Manuel Santiago.

San Juan, Porto Rico, July 11, 1925.

Salvador Mestre, E. B. Wilcox, Attorney for Defendants.

Notified with service of a copy of the foregoing motion on July 13, 1925.

John L. Gay, United States Attorney, per B. G. H.

In United States District Court

Judgment—July 21, 1925

This case comes on to be heard by the court on the motion for a new trial of the case. E. B. Wilcox, Esq., and Salvador Mestre, Esq., attorneys for the defendants, appear in behalf of the motion and Jesus A. Gonzalez, Esq., and Burton G. Henson, Esq., Assistant United States Attorney, appear in opposition thereto. The court, after hearing the respective attorneys, overrules the motion and the defendants enter an exception to the ruling of the court. Thereupon the court sentences Manuel Santiago to pay a fine to the United States of America in the sum of one hundred dollars ($100) on the first count of the information and a [fol. 8] fine of two hundred dollars ($200) on the second count of the information and to pay one half the costs of these proceedings. The court further sentences Agustin

Segurola to pay a fine of two hundred dollars ($200) on the first count of the information, three hundred dollars ($300) on the second count thereof and one half of the costs of these proceedings.

The court directs that said defendants stay committed until said fines and costs are paid.

IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF ERROR—Filed July 21, 1925

To the Honorable Ira K. Wells, Judge of said Court:

Come now Agustin Segurola and Manuel Santiago by their undersigned attorneys at law and show that on the eighth day of the month of July, A. D. 1925, at the trial of the above-entitled cause the jury found a verdict of guilty against the above named defendants, Agustin Segurola and Manuel Santiago, on both counts appearing in the information filed in the above-entitled cause; that thereafter said defendants filed a motion for a new trial in said cause which was on this date denied, and that upon said verdict final judgment against both defendants was entered on this date.

Your petitioners, feeling themselves aggrieved by said verdict and judgment as aforesaid, herewith petition the court for an order allowing them to prosecute a writ of error to the Circuit Court of Appeals of the United States for the First Circuit, sitting at Boston, Mass., under the laws of the United States made and provided.

Wherefore, premises considered, your petitioner prays for a writ of error to issue that an appeal in this behalf to the said United States Circuit Court of Appeals, for the correction of the errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of security to be given by plaintiffs in error conditioned as the law directs and upon the giving of such bond as may be required that all further proceedings may [fol. 9] be suspended until the determination of the said writ of error by said Circuit Court of Appeals.

San Juan, Porto Rico, July 21, 1925.

Salvador Mestre, E. B. Wilcox, Attorneys for Petitioners.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING WRIT OF ERROR—July 21, 1925

The foregoing petition allowed upon the filing of a bond by each of the above defendants in the sum of one thousand dollars, to be approved by the clerk of this court.

San Juan, Porto Rico, July 21, 1925.

Ira K. Wells, Judge.

Received copy of the foregoing petition for a writ of error and a copy of the assignment of errors attached thereto.

San Juan, Porto Rico, July 21, 1925.

Burton G. Henson, Asst. United States Attorney.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed July 21, 1925

Come now the above named defendants, Agustin Segurola and Manuel Santiago, in the above entitled cause, and in connection with their petition for writ of error in this cause assign the following errors which defendants aver occurred at the trial thereof, and upon which they rely to reverse the judgment entered herein as appears from the record:

1. Because the defendants were not furnished, upon application for same, with a copy of the information filed against them in the above entitled cause, as provided by the Act of Congress of 1917 known as the Organic Act for Porto Rico, to which refusal defendants seasonably noted an exception.

2. Because the defendants were held to answer for a criminal offense in the above entitled cause and tried and convicted thereon without due process of law, because de- [fol. 10] fendants were not furnished with a copy of said charges.

3. Because the court refused to allow counsel for defendants to cross-examine the witness for the prosecution,

police officer Ceballos, as to the source of the information testified by him to have been received to the effect that the approaching automobile in which defendants were was being used at the time by defendants in transporting liquors in violation of the Federal Prohibition Law, to which refusal attorneys for defendants noted an exception.

4. Because the court admitted as evidence at the trial of said cause the liquors seized by the police officer Ceballos and delivered to the Federal Director of Prohibition for this prosecution, the court having previously during the trial refused the attorneys for the defendants to cross-examine the said officer Ceballos as to the source of the information testified by him to have been received that the defendants were approaching the town of Carolina in an automobile used by them at the time in transporting liquors in violation of the Federal Prohibition Law, to which defendants noted an exception.

5. Because the court allowed the United States Attorney over the objection of defendants' attorney to cross-examine the defendant Manuel Santiago as to matters not properly related to the direct examination, and not pertinent to his defense and to the prejudice of said defendant, to which attorney for defendants noted an exception.

6. Because the court denied the motion of defendants, made at the conclusion of the case for the prosecution, to oblige the United States Attorney to elect to proceed on the count charging unlawful transportation of the liquors in question or upon the count charging unlawful possession of said liquors, it being shown from the evidence of the prosecution that there was no possession of said liquors by defendants except the possession of same during the act of the transportation charged.

7. Because the defendants were placed in jeopardy twice [fols. 11-15] and tried and convicted twice for the same offense, it not appearing from the evidence of the prosecution that the defendants were in possession of the liquors described in the information at any time or place except at the time and place they were charged with having unlawfully transported same.

8. And specifically as to the defendant Manuel Santiago there was insufficient evidence to justify a conviction on either of the two counts charged in the information.

9. Because the court erred in overruling the defendants' motion for a new trial.

San Juan, Porto Rico, July 21, 1925.

Salvador Mestre, E. B. Wilcox, Attorneys for Defendants.

Supersedeas bonds on writ of error for $1,000.00 approved and filed July 21, 1925, omitted in printing.

[fol. 16] In United States District Court

Objection of the United States to Granting of Writ of Error—Filed July 22, 1925

Comes now the United States, by the United States Attorney for the District of Porto Rico, and makes objection to the granting by this Honorable Court of a writ of error to the Circuit Court of Appeals of the United States for the First Circuit in the above entitled case, and for cause therefor states the following:

1. That the first two paragraphs of the assignment of errors are ambiguous and are apt to deceive the Circuit Court of Appeals as to the true facts and actual transactions in this case.

2. That it may be inferred from the said first two paragraphs of the said assignment of errors that the defendants requested a copy of the information filed against them and they were not permitted to examine a copy in the office of the clerk of this court, or to have the same read to them, which would not be a true interpretation of the facts.

3. That it may be inferred from the said first two paragraphs of the assignment of errors that the defendants requested a copy of the said information after taking the pauper's oath, as prescribed by the Act of Congress of June 25, 1910 (see 36 Stat. at Large 866), whereas in truth

and in fact no such oath was ever filed by either of the defendants, nor was such an oath ever requested, neither did the defendants, their counsel, or either of them, tender or offer the clerk of this court at any time the fees prescribed by law for the issuance of a copy of said information by the clerk of this court, his deputies or assistants.

And because the said paragraphs of the assignment of errors are misleading, ambiguous and apt to distort the true interpretation of the transactions as had in and before the trial of the above-entitled case, the United States objects to the granting by this Honorable Court of the writ of error as prayed for by the said defendants.

Respectfully submitted,

John L. Gay, United States Attorney

[fol. 17] Copy mailed to Mr. Mestre, July 22, 1925. H. G. H.

Citation in usual form showing service on John L. Gay, omitted in printing.

[fol. 18] In United States District Court

Motion and Order for Establishment of Time, etc. Filed August 21, 1925

Comes now the appellant herein, Agustin Segurola, and unto the court respectfully shows:

1. That the time fixed by the court within which the transcript of the testimony and the record of this writ of error, allowed herein, is about to expire.

2. That due to delays unavoidable by counsel and appellant, the transcript of the testimony in narrative form has not yet been submitted for approval, but now is in the course of preparation and it will be impossible that same be approved by the court within the thirty days granted therefor by the court.

3. That after same be submitted to the District Attorney considerable time may elapse before the approval of the

court of the said transcript of testimony and the record can be secured.

Therefore, appellant prays that the time already allowed be extended for sixty days from date for the approval of the record, and that the time for filing the record in the United States Circuit Court of Appeals for the First Circuit be extended to December 15, 1925.

August 20, 1925.

(Salvador Mestre (by E. W. B.), E. B. Wilcox, Attorneys for Appellant.

Received copy of the foregoing motion on 21st of August, 1925.

Burton G. Henson, Asst. United States Attorney.

Time extended to December 15, 1925, in which to have record filed in United States Circuit Court of Appeals at Boston.

Dated at San Juan, Porto Rico, this twenty first day of August, 1925.

Ira K. Wells, Judge.

[fol. 19] In United States District Court

Notice of Submission of Transcript of Testimony. Filed August 22, 1925

Please take notice that on August 29, 1925, at 9. A.M., the appellant will move the court to approve the transcript of the record of the testimony and proceedings in the above-entitled case attached hereto.

San Juan, Porto Rico, August 22, 1925.

E. B. Wilcox, of Counsel for Appellant.

Received copy of the foregoing notice and of appellant's proposed transcript of the testimony and proceedings at the trial of said cause, on this twenty second day of August, 1925.

Jesus A. Gonzalez, Asst. United States Attorney.

Order Approving Transcript of Testimony

Now on this second day of September, 1925, the following transcript of the record of the testimony and proceedings in the above entitled case is hereby approved, there being no objections thereto.

Ira. K. Wells, Judge.

In United States District Court

Transcript of Testimony Taken at Trial on July 8, 1925

Alfonso Ceballos, District Chief of Police, Carolina, a witness for the prosecution, was duly sworn and testified on direct examination:

My name is Alfonso Ceballos; I am an officer in the insular police force, and on or about May 26th, 1925, I was the district chief of police at Carolina. I know Augustin Segurola and Manuel Santiago, who are here in court. [Pointing to defendants.] On or about May 26th, 1925, I had dealings with them in connection with a case of smuggling liquor. On that day I had information by telephone — confidential — to the effect that a Buick automobile was [fol. 20] being driven from Luquillo to Loiza, by Mr. Segurola, and then I went and got a Ford driven by Ismael Colon and went to the road between Carolina and Canovanas, and when I saw the car coming I told my driver to turn my car around in order to block the other car. It was the Buick car driven by Segurola that was coming. Segurola pushed his car to our car and we had to let him pass our car, and we chased him, not losing sight of him. When he reached the town he was going along Munoz Street and turned to Amadeo Street in the town of Carolina.

I then told my chauffeur not to follow his car but to move forward and get in his way and stop him. Then we went after him and passed him and when he tried to cut in Jose de Diego Street we were in front of his car and he had to stop. When he realized that I was in front of him he stopped his car and put it in reverse, and he had a collision with an electric post. Mr. Segurola had a collision with an electric post. Mr. Segurola was driving backwards and I was moving forward, and when he had a collision I

got out of my car and arrested him. Segurola was driving the car and Manuel Santiago was with him. I then told him to get out of the car and when they got out I found that in the back part of the car there was some liquor in Mr. Segurola's Buick car. When I took Mr. Segurola to the police station he said that I had been more fortunate than he was.

I took the liquor from the car and examined it; there was whiskey, Hennessey brandy, vermouth, brandy in small bottles and gin. I have seen those sacks before when I brought them here to the prohibition office from Carolina. I brought them from the police headquarters after they were taken from Mr. Segurola. I am sure that they are the same liquors. These two sacks are the same liquors; there were eleven sacks; the liquor was loose in the car and I put it in the sacks; these are the sacks in which I placed the liquors. I seized the liquors in loose bottles; there were 188 in all. Manuel Santiago was sitting by the side of Segurola in the car during the whole time.

[fol. 21] [The District Attorney stated to the court that the rest of the liquors were up stairs, to which statement objection was made. The District Attorney stated that in a few minutes the liquors would be brought down.]

Cross-examination by Mr. Mestre:

I know that these are the same liquors seized from Mr. Segurola because when I brought the liquor to the prohibition office they were labelled with the same labels as they now have and I recognize it as the same liquor. These labels were on the sacks; the sacks are the same; I believe that it is the same liquor because these are the kinds I took; I suppose that it is the same liquor because it is the same kind which I seized and because it is in the same sacks in which I brought it and it is so labelled. That is the only foundation that I have for believing that it is the same liquor and in the same sacks, and it is the same kind of liquor. I did not try any of the liquor or uncork any bottles and try to find out what was in it.

Q. 1. Now you have stated that you received confidential telephone information that there was a car coming with liquor, did you not?

A. Yes, sir.

Q. 2. Who gave you that information?

Mr. Gonzalez (Assistant United States Attorney): I object as they are the secrets of the police force, which should not be stated in a court of justice, and the stating of the source of such information would be against public safety.

The Court: The objection is sustained.

Mr. Mestre: I take an exception.

Examination by the Court:

Witness: I brought the liquor which I seized from this court and delivered it to the prohibition office to Mr. Fernandez Nater, an officer of the prohibition office, taking a receipt for it on May 27 in the morning. Those marked and labeled at that time.

TESTIMONY OF ISMAEL COLON, CHAUFFEUR, OF CAROLINA, P. R., A WITNESS FOR THE PROSECUTION.

[fol. 22] Direct examination:

My name is Ismael Colon. I live at Carolina, P. R. On or about May 26, 1925, I was at the plaza in Carolina. I know Chief of Police Ceballos. I am a chauffeur. On that day I was at the plaza at Carolina and Chief of Police Ceballos came to me and told me to take him to the other side of the bridge in my car.

[The United States Attorney agrees that there was not search warrant to search the automobile.]

When we crossed the bridge we saw a car coming and he told me: "Now you have to get in the way of this car and stop it." When he said "me" to refer to myself; I said "him" I refer to the chief of police. I told him that I could not do that because I was not going to destroy my car. Then the car that was coming passed us and I turned my car and we followed it. I do not know what kind of a car it was. Then we went to the town and while there we saw the other car coming and we came in its way, and the other car was moving backward and it had a collision with a post. I did not see the car at this time. I know that there was a collision because we stopped on one side of the plaza and the collision was on the other. I know there was a collision be-

cause I saw it. Yes, sir, I saw the car. I cannot say what kind of a car it was, whether a Packard or a Buick; it looked like a Packard or a Buick. When we got to the plaza, we stopped the car and the chief of police called out and went toward the car that had collided to the other car. He then took some passengers and went away,—I do not know their names.

Jose Alvarez, chauffeur, Carolina, Porto Rico, a witness for the prosecution, was thereupon duly sworn and testified as follows:

Direct examination:

My name is Jose Alvarez. I live at Carolina, I am a chauffeur; I do not know Segurola or Manuel Santiago. I know Chief of Police Ceballos of Carolina. On or about May 26, 1925, I was at Carolina and saw Chief Ceballos on that day. I was at the plaza at Carolina and saw a car [fol. 23] that had collided with a post. I went toward the car and found the chief of police opening the back of the car, taking a bottle of liquor out of it. I saw two passengers in Buick car. There were two persons in it whom I do not know. I might recognize them if I saw them. [Identifies defendants Segurola and Santiago.] I am positive that I saw these two persons in the car at that moment. The chief of police told me to take the car to headquarters and we took it there. When the chief of police told me the car had collided with the post, to take the car to headquarters, he took the two persons in another car. I did not see the liquor at headquarters. This was in the afternoon.

Cross-examination by Mr. Mestre:

My name is Jose Alvarez. I did not notice at the moment which of the two persons seated in the car was at the driver's wheel. The chief of police took some liquor from the back part of the car; I said the top of the back part of the car and took it from there. The liquor could not be seen unless the top was off.

The Court: Will you please recall the Chief of Police, Ceballos, as I would like to ask him another question?

Whereupon said witness was called and testifies as follows:

Examination by the Court:

On the date mentioned Agustin Segurola was driving the car. I seized this car because of confidential information which I received by telephone and also the manner in which Segurola acted by passing me at high speed.

Q. 1 What did he do that made you suspicious?

A. In the first place he put his car on my car and then he ran away. The confidential information that I received was that through Luquillo a car had passed driven by Agustin Segurola and containing intoxicating liquors.

Cross examination by Mr. Mestre:

I have stated that I was suspicious because he threw his car against my car and because he ran away at great speed. (fol. 24) By saying that he threw his car against mine, I mean that he tried to have a collision with my car and if it had not been for my chauffeur he would have done so.

He tried to bump his car against mine, but he had no collision because we let him pass. From his attitude he tried to bump his car on my car. The reason I had, at that time if we have not taken the precaution we took he could have bumped his car against mine. We had to let him go by and he ran away. I say he ran away because he was driving in a great speed. When his car met my car, he put it in reverse and went away and that gave me suspicion that he was driving to run away. Yes, sir, that was in town. I met him near the town, about three kilometers away. He put the car in reverse in town three kilometers from the place where I first met him. I say he tried to run away from me at the first time I met him because he tried to bump his car on mine and it was going at great speed.

No, sir, I did not order him to stop. I did not do so because we tried to make him stop by getting in his way.

Examination by United States Attorney:

I stated that Segurola's car collided with the post.

Q. 2. In your opinion if the post had been a person, could that person have avoided the collision in the same way you avoided the collision with him?

A. That is very difficult because he was going very fast.

Answers to questions by a Juryman:

This was about five o'clock in the afternoon.

I was dressed in uniform. I tried to get in his way and make him stop. Yes, sir, there are many Fords turning around on the public roads every day. Segurola should have thought I was different from any other Ford because he saw me in uniform and think he was violating the law and he run away. I know that he saw my uniform as he was going past because he passed by my side and had to see me. No, sir, I did not get out of the Ford car to make any signs to him to stop.

[fol. 25] JOHN T. BARRETT, Federal Prohibition Director, a witness for the prosecution, was thereupon duly sworn and testified as follows:

Direct examination:

My name is John T. Barrett, Federal Prohibition Director, and the liquor seized on or about May 26, 1925, in Porto Rico. I saw the liquors on or about May 26 or 27, 1925, in connection with this case. There are some sacks of liquor which came in an automobile delivered by the chief of police of Carolina. I believe he delivered them to agent Nater. I instructed Nater to have the sacks identified and stored in the storeroom in Section A. I saw agent Nater and another agent take the sacks to the storeroom, and they were stored there. I have seen these sacks before; they belong to the Segurola case. I did not take any notice of the other names; I was interested in Mr. Segurola. They appeared this morning on a court order under which I delivered them to the United States Marshal; they have been in my custody since they were delivered to me until nine o'clock this morning.

The liquor in these sacks could not have been changed. The only ones who have keys are chemist Brindle and agent

Nater. Mr. Brindle did not go over the sacks for analysis until they were in the possession of the marshal this morning, the other sacks were delivered to the United States Marshal and taken to his storeroom.

Cross-examination by Mr. Wilcox:

Yes, sir, I say these are the same sacks that were delivered to me. I have seen plenty of other sacks like these. They are common jute sacks the same that everybody uses to store liquors in. All I see are sacks that come to my office. I do not pay any attention to other sacks outside of my office. Yes, I saw other sacks of the same material and appearance in stores and trucks. The difference in the two or three sacks referred to from the common ordinary jute sacks that you see in every day use all depends upon what is packed in them. Flour or anything like that.

These sacks have no distinguishing marks themselves [fol. 26] only in regard to the contents from the time these sacks were delivered to me. They have never been touched until they were taken out by agent Nater and the marshal. I say this because the only agents who have access to the storeroom are Brindle and Nater. Nater had no occasion to touch them, and Brindle did not have occasion to go near them because they had no notice regarding them until this morning, and he was not given a bottle for analysis until they were in the custody of the marshal. Surely they could touch them, but I have full confidence in my agents. I am quite confident that these sacks have not been touched since they were stored. My confidence in the men who have access is such that I could swear under oath that they have not been touched since they were put in the storeroom. I am swearing to a thing I believe, I am swearing to what I know. It is impossible that somebody—some burglar should have made a false key to that storeroom and entered there at night and made some changes in that liquor while I was peacefully asleep.

Redirect examination by Mr. Gonzalez, Assistant United States Attorney:

The system of identification of liquors is, when liquor is delivered to my office by the police or by agents, when

the liquor is brought I insist that every man write his name on the tag. I examine the tag myself to see they are properly made. Nobody knows the difficulty I had at first over the identification of liquor. I have tried to improve on that method and I thought I had it down now. In my storeroom the locks for each of the storerooms have three keys, and there is a door lock and two padlocks, and a man cannot get in with one key or with two. The keys are in a private drawer of my safe and in order to get the keys anybody has to come to me or to the chief clerk to give them the key to open the private drawer and go to the storerooms.

Recross-examination by Mr. Wilcox:

No, sir, the chief clerk would not give the key to anyone without my knowledge.

[fol. 27] William Reinold, Jr., Federal Prohibition Agent and chemist, I have seen these bottles you showed me before. This morning Mr. Barrett gave me this bottle and told me it was from the Segurola case. I made an analysis of that bottle. It contained 46.7 alcohol per volume and is fit for beverage purpose.

Cross-examination by Mr. Wilcox:

To determine its fitness for beverage purposes, I made quite a good analysis, which included almost all of the things which might be expected to be in it.

X Q. 1. I will ask you to state, as one man to another, and under the solemnity of your oath, if you did make an analysis to determine whether or not that liquor was fit for beverage purposes? Tell the truth.

A. Yes, I made an analysis for wood alcohol.

X Q. 2. Did you make an analysis to determine whether it was fit for beverage purposes?

A. Yes.

The Court: It is the kind of whiskey as branded?

Mr. Wilcox: I object to the court——

The Court: Objection overruled.

Mr. Wilcox: I take an exception.

The Court (to Witness): Does the bottle contain whiskey?

A. Yes, sir.

Mr. Wilcox: We think these questions should come from the Government and not from the bench.

The Court: I think the court owes a duty to itself and the court to see that the facts are brought out, whichever way they turn.

Cross-examination by Mr. Wilcox:

Witness: I know it is whiskey because I tested it and smelled it, and I know it is whiskey. I am not addicted to drinking whiskey, but I have had some experience. I have been working in alcoholic liquors for about five months and can tell from the smell the kind of liquor it is. To distinguish between brandy and whiskey, brandy has some flavoring contents which give it that particular taste and flavor, and in case of this Scotch whiskey you can tell by [fol. 28] the bitter taste and smell which it has. I could smell the brandy in it anyhow. Whiskey may be made of rye, barley and corn and different grains by fermentation. I could tell whether the liquor in this bottle is brandy or whiskey by first smelling it and then tasting it. The first thing is to smell it and then to taste it. About a spoonful or less sometimes. One is made of grapes. Brandy has a particular smell and taste. It is from some flavoring contents coming from different ethers contained in the brandy and which give the taste and flavor.

X Q. 3. What is that taste and flavor?

A. Due to its different ethers.

X Q. 4. Just what is that difference?

The Court: I do not think a man could describe it. I can tell the difference and have no doubt that you can and that the jury can but as to describing it, I do not think that any man could describe it. How can you describe the difference between two flowers? It is something which is a fact but which cannot be described.

Witness: Yes, sir, I made an analysis of the contents of that bottle. I know what the contents are now. I know it is what I put on that tag. I do not know what it was on May 26, 1925. I do not know who put that liquor in that bottle.

X Q. 5. Do you of your own knowledge know where that bottle came from?

The Court: He stated that Mr. Barrett gave — to him for analysis and that is all he knew of it.

Witness: I have never told what kind of analysis I do. I make four different tests, or six, to determine whether it is fit for beverage purposes. I always make six tests for an analysis and they included tests for wood alcohol, for all metallic substances, all alcaloids, and for all substances precipitated, a test of smell, a test for taste, and by all these tests I do not think there is anything that the liquor could contain that would escape the analysis. I made all these tests on this occasion that I took about an hour later. To test wood alcohol I made a formaldehyde test. I have [fol. 29] to oxidize the contents, first to take some of the contents so I know what passes over is wood alcohol, and then with that for a basis I oxidize, after distilling. I first distill some of the contents, then oxidize with sulphuric acid and then I made a second oxidization of oxalic acid, so I am sure if it has wood alcohol and if it is then stirred up it will produce a dark violet color when alcaloids are dropped in. Surely I drop in some alcaloids.

[The witness continued a further technical explanation of the analysis made which it is agreed is unnecessary to reproduce in the record.]

Re-examination by the United States Attorney:

When Mr. Barrett gave me this bottle it was closed. I tasted this whiskey. I have no pains or ill feeling now. Any whiskey which is made by appointment to the King and the Prince of Wales is a good whiskey.

The whiskey is offered in evidence and objection was made on the ground that it had not been [illegible] identified. The objection was overruled and the defendant took an exception, and therefore the whiskey was admitted in evidence and marked "Exhibit A" for the prosecution.

The jury excused, Mr. Mestre made the following motion:

Mr. Mestre: Our motion is to suppress the liquors in this case because the District Attorney admitted that the chief of police did not have a search warrant to search the automobile, because the chief of police testified that he searched

this automobile on account of confidential telephone information and that he was precluded by the District Attorney from stating who gave that information. That according to law a telephone conversation without identifying the party who made the statement amounts to an anonymous information and is not according to law sufficient to entitle the chief of police or any other officer to search an automobile, as was done in this case. We respectfully beg the court to suppress the liquors as evidence in this case and not to allow it to go to the jury as part of the evidence in the present case.

[fol. 30] The Court: In this case the chief of police who made this seizure has testified to the effect that he received confidential information that this defendant in his car would pass through Carolina on the day on which the seizure was made with liquor in his car, and that in accordance with this confidentially made information he was on the watchout for the defendant; that he saw the defendants in the car and tried to place himself in front of the car so that the defendant would have to stop and that the defendant tried to run into him and finally ran away and proceeded until overtaken, that after that he came up to the defendant and stopped him and searched his car. I am satisfied that this chief of police had a right, by reason of the confidential information received by him and by reason of the suspicious actions of the defendant, to believe that a law was being violated and to search the car, and it is my opinion that the search of this car was legal, and the motion will be overruled.

To which the defense then and there duly excepted.

Mr. Mestre: I would also like to bring up again in order to get it in the record the objection we made at the arraignment on the ground that the defendants have not been furnished with a free copy of the information, and that we objected to going to trial on that ground.

The Court: The objection is overruled for the reason that at the time that the defendants pleaded to the information, the information was in court and open to their inspection, and the defendants and their attorneys were informed by the court that they were at perfect liberty to examine said information in any way they desired or at perfect liberty to make copies thereof or to order the copies to be

made and certified to by the clerk upon the payment of the fee as provided by law and the defendants and their attorneys have had every means of acquainting themselves with the contents of the information. The motion is overruled.

Mr. Mestre: We take an exception.

Whereupon MANUEL SANTIAGO, defendant, was called as a [fol. 31] witness for the defense and after being duly sworn testified as follows:

Direct examination by Mr. Mestre:

My name is Manuel Santiago. I do any kind of work and I live at Puerta de Tierra. On the twenty sixth of May, 1925, in the afternoon, I was at Fajardo. On that day I met Mr. Segurola and he told me he was coming to San Juan and asked me if I wanted to come with him and I said yes, and came with him. I asked him to bring me over.

The Court: You asked him?

A. Yes, sir, I did.

I took no part in loading any liquor in the car. I did not know there was any liquor in the car for I saw none. I do not know how to drive a car.

Q. 1. Could that car bring anything inside of the back part of it without a passenger seeing it?

A. I do not think so.

Q. 2. You don't understand my question.

The Court: He might have understood it.

Witness: I saw no liquor in the car, which was a two passenger car. Behind the two seats was a box which was closed. A passenger could not see the contents of that closed box. I do not know what it contained. I did not look into that box. I did not know that the car was bringing any liquor. I was not the owner or in possession of any liquor on that day. I have no business with Segurola on that day. I came with him because I wanted to come to San Juan and all I did was to ask Segurola to bring me to San Juan—get in the car and come in with him.

Cross-examination by United States Attorney:

I work at any place where I find work. I work at a pier. I work anywhere. It is about a year ago since I left the pier. I am engaged in many kinds of businesses, among them is buying fowls for the market, which I bring to sell at the market from the country. At Rio Piedras. On that day I was at Fajardo for pleasure. I do not remember whether it was Sunday or Monday. I was there for pleasure. I went there because I wish to be there but [fol. 32] have not been there before. I went along in a Ford, whose owner I do not know and paid him a dollar and a half for the trip. I did not go that day. I stayed in Fajardo two days. I slept in the house of a woman of the street.

X Q. 3. Was the woman in a relation to you?

Mr. Mestre: I object to the question, which has no relation to the case.

The Court: They have the right to know what he was in Fajardo for.

Mr. Mestre: But not to go into this detail.

The Court: It tends to bring out what kind of a man he is. He is your witness.

Mr. Mestre: But on a cross-examination he must confine himself to the direct examination.

The Court: You brought out that he went to Fajardo and asked the other defendant for a ride and they have a right to know why he was in Fajardo.

Mr. Mestre: But not what relations he had with a certain woman.

The Court: I think they have a right to know whether he is lying or telling the truth. They may be prepared to prove he was not in Fajardo, I do not know, but they certainly have a right to know.

Witness: I went to the house and met her. There are people who know this kind of woman and I went to one and asked where I could find one. This was at night. During the day I was just taking a walk around town. The next day I did the same thing as I was there for pleasure. I met the woman again. I met her twice. I don't recall the hour that I saw Mr. Segurola in Fajardo. I don't know whether it was in the afternoon. I have no watch.

I know that this affair between the police and Segurola happened in the afternoon because I noticed that it was in the afternoon. I did not notice what part of the day it was when I met Segurola. I paid the chauffeur one dollar and a half to take me to Fajardo. Nothing happened after I [fol. 33] left. I have known Segurola a long time. I talked with him on the way. I do not know Segurola's occupation. He is not an intimate friend. I just know him; also about four or five years but I don't know his occupation.

Yes, the police arrested us both and took us to the police headquarters. I don't know if the police found liquor in the car. I only know that we were taken to the police headquarters. He did not tell me why. I did not see the car being opened. I asked the chief why he took me to headquarters and he answered me: "Come with me." He took me inside and I sat there.

A Juryman: Where did you first see Segurola in Fajardo?

A. In the town on the street. I think it is a two seated car because there were two persons in it. I don't know whether it was a touring car or a runabout. The police did not tell me the cause of my arrest. He did not let me go, he took me to the headquarters. I don't know who filed the bond.

The Court: When did you first learn what you were arrested for?

A. After the chief of police took many sacks upstairs, he said they contained liquor. I don't know where he got them from. He took them upstairs. It was the police headquarters and he took me inside from outside. I did not see the chief of police search the car. When I first saw Segurola he was in his car at Fajardo. It was moving and I asked him to stop, which he did and took me out. I don't know what part of Fajardo this was. I don't know the streets. When the police stopped us and arrested us at Carolina, we were at the plaza. The car had a collision with a post, striking its fender at the back part. Yes, we were going backward. When the car collided we stopped and the chief of police came to us and opened the car and told us to go to headquarters. That was all I did. I was standing there and asking why he took me to headquarters. I don't know who

brought the car to headquarters. When we were coming from Luquillo, I did not see the chief of police in a Ford at the bridge nor any police officer putting up his hands to [fol. 34] stop the car or making any signal of any kind. The police chief came and opened the back part of the car and told us to go to headquarters and the car was stopped there and I was on the outside near the car. About five minutes after the collision the police came to my side.

Alfonso Ortiz, Chief of Police, recalled by United States Attorney and testified as follows:

When I came close to the car Segurola was driving and after the collision they were inside the car, and that I am positive they got out when I told them to. After I told him to get out I sent the liquor with a chauffeur to headquarters and I took the defendants to headquarters; Santiago was there and saw everything that happened. I told him I arrested him because he was transporting liquor and Santiago arrived at the same time. They saw the liquor and I counted it before Segurola; Santiago was in the adjoining room. When I opened the car at the plaza Santiago was there.

Cross-examination by Mr. Mestre:

Yes, I testified that Santiago saw the whole transaction at the moment he was arrested. At that moment I arrested them and sent the liquor to headquarters; that was all he saw at that moment. When the car collided I went to them and arrested them immediately. Their car was moving backward and we were moving forward. At the moment of the collision I was in front of them. Yes, I met the car about three kilometers from Carolina; it was going very fast and I was going in a Ford and they were only a little ahead of me. Yes, they were going fast and in a faster car than mine, but they had some obstacles in the way and had to reduce speed.

Mr. Wilcox: I desire to make a motion at this time.

The Court: The jury will be excused until two o'clock this afternoon.

Mr. Wilcox: Counsel for the defendants move the court to direct the prosecution to elect between further prosecution of this cause as between the first and second counts [fol. 35] thereof. That is to say, that the Government be forced to elect whether or not they will prosecute these defendants for possession of the liquors charged to have been found in their possession or upon the charge of transportation, for it appears from the theory of the prosecution's case as shown by the evidence that the possession with which the defendants are charged in the first count is necessarily included in the transportation as charged in the second count; for it appears from the evidence that the possession and transportation refers to the same liquor and to the same dates and are identical acts. I hope I have made that clear but I will make it clearer in argument.

Whereupon the hearing was adjourned until 1.30 o'clock P. M. on July 8, 1925, at which hour the court reconvened, in the presence of the accused and their counsel, and the following proceedings were had:

Following argument by counsel on the motion of Mr. Wilcox:

The Court: The motion is overruled.

Mr. Wilcox: I take an exception. I now request that the court give the following instructions to the jury.

In United States District Court

Praecipe for Transcript of Record. Filed August 26, 1925

To the Clerk:

Please include in the transcript of the record for the use of the United States Circuit Court of Appeals for the First Circuit certified copies of the following documents, papers and orders of the above-entitled case:

1. The information.

2. The motion of the defendant for a copy of the information, and court's action or order on said motion or request.

3. The verdict of the jury.

4. The motion for a new trial, and the court's order on said motion.

5. The sentence of the court.

[fol. 36] 6. The defendant's petition for a writ of error, the assignment of errors, and the allowance thereof.

7. The defendant's bond and the approval thereof.

8. The motion of the United States Attorney opposing the allowance of the petition of the writ of error.

9. The citation on the writ of error, and the return thereon.

10. The transcript of the evidence and proceedings taken and had at the trial.

11. The order of the court allowing until December 15, 1925, for filing the record in the office of the clerk of the United States Circuit Court of Appeals, including the motion for the extension of time.

12. Defendant's praecipe for the record.

Salvador Mestre, of Counsel for Defendant.

Received a copy of the foregoing on this the twenty-fifth day of August, 1925.

John L. Gay, United States Attorney.

In United States District Court

Order Extending Time—October 31, 1925

The motion filed by the defendant for the extension of the May, 1925, Term into the November, 1925 Term is granted by the court and it is so ordered.

In United States District Court

Bill of Exceptions—Filed December 2, 1925

Caption

Be it remembered that on the eighth day of July, A. D. 1925, being the May Term of the court of 1925, the above-entitled cause came on for trial by jury, the Hon. Ira K.

Wells, Judge, presiding. The United States was represented by Mr. Gonzalez, Assistant United States Attorney, and the defendants by Salvador Mestre, Esq., and E. B. [fol. 37] Wilcox, Esq., and thereupon the following proceedings were had and the following constitutes the action of the court in connection with said proceedings, as to which errors have been assigned by the above named defendants:

(1) Because the defendants were not furnished upon application for same with a copy of the information filed against them in the above entitled cause, as provided by the Act of Congress of 1917 known as the Organic Act for Porto Rico, to which refusal defendants seasonably noted an exception.

On the day of the arraignment the attorney for the defendants made a motion requesting that a copy of the information be furnished the defendants free of charge, which said motion was denied by the court, to which an exception was taken.

(2) Because the defendants were held to answer for a criminal offense in the above entitled cause and tried and convicted thereon without due process of law, because defendants were not furnished with a copy of said charges. And in support of this assignment defendants rely upon the denial of the motion for a copy of the information and the exception taken, and the provisions of the Act of Congress of 1917, known as the Organic Act for Porto Rico.

(3) Because the court refused to allow counsel for defendants to cross-examine the witness for the prosecution, police officer Ceballos, as to the source of the information testified by him to have been received to the effect that the approaching automobile in which defendants were was being used at the time by defendants in transporting liquors in violation of the Federal Prohibition Law, to which refusal attorneys for defendants noted an exception.

The witness Ceballos for the prosecution testified as follows:

"My name is Alfonso Ceballos; I am an officer in the insular police force, and on or about May 26, 1925, I was the district chief of police at Carolina. I know Agustin Segu-

rola and Manuel Santiago who are here in court. [Pointing to defendants.] On or about May 26, 1925, I had dealings with them in connection with a case of smuggling liquors. On that day I had information by telephone confol. 38] fidential to the effect that a Buick automobile was being driven from Luquillo to Loiza, by Mr. Segurola, and then I went and got a Ford driven by Ismael Colon and went to the road between Carolina and Canovanas, and when I saw the car coming I told my driver to turn my car around in order to block the other car. It was the Buick car driven by Segurola that was coming. Segurola pushed his car to our car and we had to let him pass our car, and we chased him, not losing sight of him. When he reached the town he was going along Munoz Rivera Street and turned to Amadeo Street, in the town of Carolina. I then told my chauffeur not to follow his car but to move forward and get in his way and stop him. Then we went after him and passed him and when he tried to cut in Jose de Diego Street, we were in front of his car and he had to stop. When he realized that I was in front of him he stopped his car and put it in reverse, and he had a collision with an electric post. Mr. Segurola had a collision with an electric post. Mr. Segurola was driving backwards and I was moving forward, and when he had a collision I got out of my car and arrested him. I then told him to get out of the car and when he got out I found that in the back part of the car that there was some liquor in Mr. Segurola's Buick car. When I took Mr. Segurola to the police station he said that I had been more fortunate than he was. I took liquor from the car, and examined it; there was whiskey, Hennessey brandy, vermouth, brandy in small bottles and gin. I have seen those sacks before when I brought them here to the prohibition office from Carolina. I brought them from the police headquarters after they were taken from Mr. Segurola. I am sure that they are the same liquors. These two sacks are the same liquors; there were eleven sacks; these are the sacks in which I placed the liquors. I seized the liquors in loose bottles, there were 188 in all. Manuel Santiago was sitting by the side of Segurola in the car during the whole time.

[The District Attorney stated to the court that the rest of the liquors were upstairs, to which statement objection

[fol. 39] was made, the District Attorney stating that in a few minutes the liquors would be brought down.]

Cross-examination by Mr. Mestre:

I know that these are the same liquors seized from Mr. Segurola because when I brought the liquor to the prohibition office they were labelled with the same labels as they now have and I recognize it as the same liquor. These labels were on the sacks; the sacks are the same; I believe that it is the same liquor because these are the kinds I took. I suppose that it is the same liquor because it is the same kind which I seized and because it is in the same sacks in which I brought it and it is so labeled. That is the only foundation that I have for believing that it is the same liquor and in the same sacks, and it is the same kind of liquor. I did not try any of the liquor or uncork any bottles and try to find out what it was.

X Q. 1. Now you have stated that you received confidential telephone information that there was a car coming with liquor, did you not?

A. Yes, sir.

X Q. 2. Who gave you that information?

Mr. Gonzalez (Assistant United States Attorney): I object as they are the secrets of the police force, which should not be stated in a court of justice, and the stating of the source of such information would be against public policy.

The Court: The objection is sustained.

Mr. Mestre: I take an exception.

Examination by the Court:

Witness: I brought the liquor which I seized from this court and delivered it to the prohibition office to Mr. Fernandez Nater, an officer of the prohibition office, taking a receipt for it on May 27 in the morning. Those marked and labeled at that time."

(4) Because the court admitted as evidence at the trial of said cause the liquors seized by the police officer Ceballos and delivered to the Federal Director of Prohibition for this prosecution, the court having previously during the [fol. 40] trial refused the attorneys for the defendants to

cross-examine the said officer Ceballos as to the source of the information testified by him to have been received that the defendants were approaching the town of Carolina in an automobile used by them at the time in transporting liquors in violation of the Federal Prohibition Law, to which defendants noted an exception.

In support of this assignment reference is made to the testimony of the policeman Ceballos especially in reference to the court's refusal to allow the officer to be cross-examined as to the source of his information that defendants were transporting liquor, and the testimony of John T. Barrett and William Brindle, whose testimony appears in the transcript of the testimony in narrative form approved by the court on the second day of September, 1925.

It is urged that the liquors were improperly admitted as evidence because they were seized without a search warrant, and in violation of the fourth and fifth amendments of the Constitution of the United States, re-enacted by Congress in the act of 1917 known as the Organic Act for Porto Rico. It is further asserted that the court erred in the course of the defendants's cross-examination of William Brindle in regard to the contents of certain bottles offered and admitted in evidence, wherein the following occurred:

"William Brindle, Jr., Federal Prohibition Agent and chemist: I have seen these bottles you showed me before. This morning Mr. Barrett gave me this bottle and told me it was from the Segurola case. I made an analysis of that bottle. It contained 46.7 alcohol per volume and is fit for beverage purposes.

Cross-examination by Mr. Wilcox:

To determine its fitness for beverage purposes, I made quite a good analysis which included almost all of the things which might be expected to be in it.

X Q 1. I will ask you to state, as one man to another, and under the solemnity of your oath, if you did make an analysis to determine whether or not that liquor was fit [fol. 41] for beverage purposes. Tell the truth.

A. Yes, I made an analysis for wood alcohol.

X Q 2. Did you make an analysis to determine whether it was fit for beverage purposes?

A. Yes.

The Court: It is the kind of whiskey as branded?

Mr. Wilcox: I object to the court——
The Court: Objection overruled.
Mr. Wilcox: I take an exception.

The Court (to witness): Does the bottle contain whiskey?
A. Yes, sir.

Mr. Wilcox: We think these questions should come from the Government and not from the bench.
The Court: I think the court owes a duty to itself and the court to see that the facts are brought out, which ever way they turn.

Cross-examination by Mr. Wilcox:

Witness: I know it is whiskey because I tested it and smelled it, and I know it is whiskey. I am not addicted to drinking whiskey, but I have had some experience. I have been working in alcoholic liquors for about five months and can tell from the smell the kind of liquor it is. To distinguish between brandy and whiskey, brandy has some flavoring contents which give it that particular taste and flavor, and in case of this Scotch whiskey you can tell by the bitter taste and smell which it has. I could smell the brandy in it anyhow. Whiskey may be made of rye, barley and corn and different grains by fermentation. I could tell whether the liquor in this bottle is brandy or whiskey by first smelling it and then tasting it. The first thing is to smell it and then to taste it. About a spoonful or less sometimes. One is made of grapes. Brandy has a particular smell and taste. It is from some flavoring contents coming from different ethers contained in the brandy and which give the taste and flavor.

X Q. 3. What is that taste and flavor?
A. Due to its different ethers.
[fol. 42] X Q. 4. Just what is that difference?

The Court: I do not think a man could describe it. I can tell the difference and have no doubt that you can and that the jury can, but as to describing it, I do not think that any man could describe it. How can you describe the difference between two flowers? It is something which is a fact but which cannot be described.

Witness: Yes, sir, I made an analysis of the contents of that bottle. I know what the contents are now. I know it is what I put on that tag. I do not know what it was on May 26, 1925. I do not know who put that liquor in that bottle.

Q. Do you of your own knowledge, know where that bottle came from?

The Court: He stated that Mr. Barrett gave it to him for analysis and that is all he knows of it.

Witness: I have never told what kind of analysis I do. I make four different tests or six to determine whether it is fit for beverage purposes. I always make six tests for an analysis and they included test for wood alcohol, for all metallic substances, all alcoloids, and for all substances precipitated, a test of smell, a test for taste, and by all these tests I do not think there is anything that the liquid could contain that would escape the analysis. I made all these tests on this occasion that I took about an hour. To test wood alcohol, I made a formaldehyde test. I have to oxidize the contents, first to take some of the contents so I know what passes over is wood alcohol, and then with that for a basis I oxidize, after distilling. I first distill some of the contents. Then oxidize with sulphuric acid and then I made a second oxidization of oxalic acid, so I am sure if it has wood alcohol and if it is then stirred up it will produce a dark violet color, when alcoloids are dropped in. Surely I drop in some alcoloids.

[The witness continued a further technical explanation of the analysis made which it is agreed is unnecessary to reproduce in the record.]

[fol. 43] Re-examination by the United States Attorney:

When Mr. Barrett gave me this bottle it was closed. I tasted this whiskey. I have no pains of ill-feeling now. Any whiskey which is made by appointment to the king and the Prince of Wales is a good whiskey. The whiskey is offered in evidence and objection was made on the ground that it had not been properly identified. The objection was overruled and the defendants take an exception and therefore the whiskey was admitted in evidence and marked "Exhibit A" for the prosecution.

The jury excused, Mr. Mestre made the following motion:

Mr. Mestre: Our motion is to suppress the liquors in this case because the District Attorney admitted that the chief of police did not have a search warrant to search the automobile, because the chief of police testified that he searched this automobile on account of confidential telephone information and that he was precluded by the District Attorney from stating who gave that information. That according to law a telephone conversation without identifying the party who made the statement amounts to an anonymous information and is not according to law sufficient to entitle the chief of police or any other officer to search an automobile, as was done in this case. We respectfully beg the court to suppress the liquors as evidence in this case and not to allow it to go to the jury as part of the evidence in the present case.

The Court: In this case the chief of police who made this seizure has testified to the effect that he received confidential information that this defendant, in his car, would pass through Carolina on the day on which the seizure was made, with liquor in his car, and that in accordance with this confidentially made information he was on the watch out for the defendant; that he saw the defendants in the car and tried to place himself in front of the car so that the defendant would have to stop and that the defendant tried to run into him and finally ran away and proceeded until overtaken; that afterwards he came up to the defendant and [fol. 44] stopped him and searched his car. I am satisfied that this chief of police had a right, by reason of the confidential information received by him and by reason *the* the suspicious actions of the defendant, to believe that a law was being violated and to search the car, and it is my opinion that the search of this car was legal, and the motion will be overruled.

To which the defense then and there duly excepted.

Mr. Mestre: I would also like to bring up again in order to get it in the record the objection we made at the arraignment on the ground that the defendants have not been furnished with a free copy of the information, and that we objected to going to trial on that ground.

The Court: The objection is overruled for the reason that at the time the defendants plead to the informa-

tion, the information was in court and open to their inspection, and the defendants and their attorneys were informed by the court that they were at perfect liberty to examine said information in any way they desired or at perfect liberty to make copies thereof or to order the copies to be made and certified to by the clerk upon the payment of the fee as provided by law and the defendants and their attorneys have had every means of acquainting themselves with the contents of the information. The motion is overruled.

Mr. Mestre: We take an exception."

(5) Because the court allowed the United States Attorney, over the objection of defendants' attorney, to cross-examine the defendant, Manuel Santiago, as to matters not properly related to the direct examination, and not pertinent to his defense, and to the prejudice of said defendant, to which attorney for defendant noted an exception.

The following is the substance of the testimony and cross-examination of the defendant MANUEL SANTIAGO and proceeding in connection therewith:

"My name is Manuel Santiago. I do any kind of work and I live at Puerta de Tierra. On the 26th of May, 1925, in the afternoon, I was at Fajardo. On that day I met Mr Segurola and he told he was coming to San Juan and asked [fol. 45] me if I wanted to come with him and I said yes, and came with him. I asked him to bring me over.

The Court: You asked him?

A. Yes, sir.

I took no part in loading any liquor in the car. I did not know there was any liquor in the car for I saw none. I do not know how to drive a car.

Q. 1. Could that car bring anything inside of the back part of it without a passenger seeing it?

A. I do not think so.

Q. 2. You don't understand my question.

The Court: He might have understood it.

A. I saw no liquor in the car which was a two passenger car. Behind the two seats was a box which was closed. A

passenger could not see the contents of that closed box. I do not know what it contained. I did not look into that box. I did not know that the car was bringing any liquor. I was not the owner or in possession of any liquor on that day. I have no business with Segurola on that day. I came with him because I wanted to come to San Juan and all I did was to ask Segurola to bring me to San Juan, get in the car and come in with him.

Cross-examination by United States Attorney:

I work at any place where I find work. I work at a pier. I work anywhere. It is about a year ago since I left the pier. I am engaged in many kinds of businesses; among them is buying fowls for the market, which I bring to sell at the market from the country. At Rio Piedras. On that day I was at Fajardo for pleasure. I do not remember whether it was Sunday or Monday. I was there for pleasure. I went there because I wish to be there but have not been there before. I went along in a Ford, whose owner I do not know and paid him a dollar and a half for the trip. I did not go that day. I stayed in Fajardo two days. I slept in the house of a woman of the street.

Q. 3. Was the woman in a relation to you?

[fol. 46] Mr. Mestre: I object to the question, which has no relation to the case.

The Court: They have a right to know what he was in Fajardo for.

Mr. Mestre: But not to go into this detail.

The Court: It tends to bring out what kind of a man he is. He is your witness.

Mr. Mestre: But on a cross-examination he must confine himself to the direct examination.

The Court: You brought out that he went to Fajardo and asked the other defendant for a ride and they have a right to know why he was in Fajardo.

Mr. Mestre: But not what relations he had with a certain woman.

The Court: I think they have a right to know whether he is lying or telling the truth. They may be prepared to prove he was not in Fajardo, I do not know, but they certainly have a right to know.

Witness: I went to the house and met her. There are people who know this kind of woman and I went to one and asked where I could find one. This was at night. During the day I was just taking a walk around town. The next day I did the same thing as I was there for pleasure. I met the woman again. I met her twice. I don't recall the hour that I saw Mr. Segurola in Fajardo. I don't know whether it was in the afternoon, I have no watch.

I know that this affair between the police and Segurola happened in the afternoon because I noticed that it was in the afternoon. I did not notice what part of the day it was when I met Segurola. I paid the chauffeur one dollar and a half to take me to Fajardo. Nothing happened after I left. I have known Segurola a long time. I talked with him on the way over. I do not know Segurola's occupation. He is not an intimate friend. I just know him. Also about four or five years, but I don't know his occupation. Yes the police arrested us both and took us to the police [fol 47] headquarters. I don't know if the police found liquor in the car. I only know that we were taken to the police headquarters. He did not tell me why. I did not see the car being opened. I asked the chief why he took me to headquarters and he answer me 'come with me.' He took me inside and I sat there.

A Juryman: Where did you first see Segurola in Fajardo?

A. In the town on the street. I think it is a two seated car because there were two persons in it. I don't know whether it was a touring car or a runabout. The police did not tell the cause of my arrest. He did not let me go, he took me to the headquarters. I don't know who filed the bond.

The Court: When did you first learn what you were arrested for?

A. After the chief of police took many sacks upstairs he said they contained liquor. I don't know where he got them from. He took them upstairs. It was the police headquarters and he took me inside from outside. I did not see the chief of police search the car. When I first saw Segurola he was in his car at Fajardo. It was moving and I asked him to stop which he did and took me out. I don't

know what part of Fajardo this was. I don't know the streets. When the police stopped us and arrested us at Carolina, we were at the plaza. The car had a collision with a post, striking its fender at the back part. Yes, we were going backward. When the car collided we stopped and the chief of police came to us and opened the car and told them to go to headquarters. That was all I did. I was standing there and asking why take me to headquarters. I don't know who brought the car to headquarters. When we were coming from Luquillo, I did not see the chief of police in a Ford at the bridge nor any police officer putting up his hands to stop the car or making any signal of any kind. The police chief came and opened the back part of the car and told us to go to headquarters, and the car was stopped there and I was on the outside near the car. About five minutes after the collision the police came to my side."

[fol. 48] (6) Because the court denied the motion of the defendants, made at the conclusion of the evidence, to oblige the United States Attorney to elect to proceed on the count charging unlawful transportation of the liquors in question or upon the count charging unlawful possession of said liquors, it being shown from the evidence of the prosecution that there was no possession of said liquors by defendants except the possession of same during the act of transportation charged.

There being no further question, witness was excused and withdrew.

At the conclusion of the testimony taken in the case, Mr. Wilcox for defendants made the following motion:

"Mr. Wilcox: I desire to make a motion at this time.

The Court: The jury will be excused until two o'clock this afternoon.

Mr. Wilcox: Counsel for the defendants move the court to direct the prosecution to elect between the first and second counts thereof. That is to say, that the Government be forced to elect whether or not they will prosecute these de-

fendants for possession of the liquors charged to have been found in their possession, or upon the charge of transportation, for it appears from the theory of the prosecution's case as shown by the evidence that the possession with which the defendants are charged in the first count is necessarily included in the transportation as charged in the second count; for it appears from the evidence that the possession and transportation refers to the same liquor and to the same dates and are identical acts. I hope I have made that clear but I will make it clearer in argument."

Whereupon the hearing was adjourned until 1:30 o'clock P. M. on July 8, 1925, at which hour the court reconvened, in the presence of the accused and their counsel, and the following proceedings were had:

Following argument by counsel on the motion of Mr. Wilcox.

"The Court: The motion is overruled.

Mr. Wilcox: I take an exception."

[fol. 40] (7) Because the defendants were placed in jeopardy twice and tried and convicted for the same offense, it not appearing from the evidence of the prosecution that the defendants were in possession of the liquors described in the information at any time or place except at the time and place they were charged with having unlawfully transported same.

As the only evidence received at the trial which referred in any way to the foregoing assignment the substance of the testimony of the following witnesses is reproduced:

Policeman Alfonso Ceballos, for the prosecution, whose testimony appears in pages 2, 3 and 4 [printed pages 37-40] of this bill of exceptions.

"My name is Ismael Ozaz, I live at Carolina, P. R. On or about May 26, 1925, I was at the plaza in Carolina. I know Chief of Police Ceballos. I am a chauffeur. On that day I was at the plaza at Carolina and Chief of Police Ceballos came to me and told me to take him to the other side of the bridge in my car.

[The United States Attorney agrees that there was no search warrant to search the automobile.]

When we crossed the bridge we saw a car coming and he told me: *'Now you have to get in the way of this car and stop it.'* When he said 'me' to refer to myself; I said 'him' I refer to the chief of police. I told him that I could not do that because I was not going to destroy my car. Then the car that was coming passed us and he turned my car and we followed it. I do not know what kind of a car it was. Then we went to the town and while there we saw the other car coming and we came in its way, and the other car was moving backward and it had a collision with a post. I did not see the car at this time. I know that there was a collision because we stopped on one side of the plaza and the collision was on the other. I know there was a collision because I saw it. Yes, sir, I saw the car. I cannot say what kind of a car it was, whether a Packard or a Buick; it looked like a Packard or a Buick. When we got to the plaza we stopped the car and the chief of police called out and went toward the car that had collided to the other car. He [fol. 50] then took some passengers and went away. I do not know their names."

Jose Alvarez for the prosecution:

"My name is Jose Alvarez. I live at Carolina. I am a chauffeur. I do not know Segurola or Manuel Santiago. I know Chief of Police Ceballos of Carolina. On or about May 26, 1925, I was at Carolina and saw chief Ceballos on that day. I was at the plaza at Carolina and saw a car that had collided with a post. I went toward the car and found the chief of police opening the back of the car, taking a bottle of liquor out of it. I saw a two passenger Buick car. There were two persons in it whom I do not know. I might recognize them if I saw them. [Identifies defendants Segurola and Santiago.] I am positive that I saw these two persons in the car at that moment. The Chief of Police Ceballos told me to take the car to headquarters and we took it there. When the chief of police told me the car had collided with the post, to take the car to headquarters, he took the two persons in another car. I did not see the liquor at headquarters. This was in the afternoon.

Cross-examination by Mr. Mestre:

My name is Jose Alvarez. I did not notice at the moment which of the two persons seated in the car was at the driver's wheel. The chief of police took some liquor from the back part of the car, I said the top of the back part of the car and took it from there. The liquor could not be seen unless the top was off.

The Court: Will you please recall the chief of police, Ceballos, as I would like to ask him another question?

Whereupon said witness was called and testifies as follows:

Examination by the Court:

On the date mentioned Augustin Segurola was driving the car. I seized this car because of confidential information which I received by telephone and also the manner in which Segurola acted by passing me at high speed.

Q. 1. What did he do that made you suspicious?

[fol. 51] A. In the first place he put his car on my car and then he ran away. The confidential information that I received was that through Luquillo a car had passed driven by Augustin Segurola and containing intoxicating liquors.

Cross-examination by Mr. Mestre:

I have stated that I was suspicious because he threw his car against my car and because he ran away at great speed. By saying that he threw his car against mine, I mean that he tried to have a collision with my car and if it had not been for my chauffeur, he could have done so.

He tried to bump his car against mine but he had no collision because we let him pass. From his attitude he tried to bump his car on my car. The reason I had at that time if we had not taken the precaution we took, he could have bumped his car against mine. We had to let him go by and he ran away. I say he ran away because he was driving at a great speed. When his car met my car, he put it in reverse and went away and that gave me suspicions that he was driving to run away. Yes, sir, that was the town. I met him near the town, about three kilometers away. He put the car in reverse in town three kilo-

meters from the place where I first met him. I say he tried to run away from me at the first time I met him because he tried to bump his car on mine and it was going at great speed.

No, sir, I did not order him to stop. I did not do so because we tried to make him stop by getting in his way.

Examination by United States Attorney:

I stated that Segurola's car collided with the post.

Q. 2. In your opinion if the post had been a person, could that person have avoided the collision in the same way you avoided the collision with him?

A. That is very difficult because he was going very fast.

Answers to Questions by a Juryman:

This was about five o'clock in the afternoon.

I was dressed in uniform. I tried to get in his way and [fol. 52] make him stop. Yes, sir, there are many Fords turning around on the public roads every day. Segurola should have thought I was different from any other Ford because he saw me in uniform and think he was violating the law and he ran away. I know that he saw my uniform as he was going past because he passed by my side and had to see me. No, sir, I did not get out of the Ford car to make any signs to him to stop."

Manuel Santiago, defendant, whose testimony appears in pages 10 to 16 [printed pages 44 to 48] of this bill of exceptions.

(9) And specifically as to the defendant, Manuel Santiago, there was insufficient evidence to justify a conviction on either of the two counts charged in the information.

The record of the testimony taken at the trial of the case, the substance of which was approved by the court on September 2, 1925, is by reference made a part of the bill of exceptions and is relied upon in support of this and other assignments herein appearing insofar as same is applicable to each.

(10) Because the court erred in overruling the defendants' motion for a new trial.

The defendants on July 13, 1925, filed the following motion for a new trial, which was argued and denied on the twenty-first day of July, 1925:

MOTION FOR NEW TRIAL.

Come now the defendants in the above-entitled cause and move the court for a new trial, for the following reasons, to wit:

1. Because the defendants were not furnished, upon application for same, with a copy of the accusation against them in said cause, as provided by law, to which defendants seasonably noted an exception.

2. Because the defendants were held to answer for a criminal offense in the above-entitled cause and tried thereon without due process of law, to which defendants noted an exception.

3. Because the verdict of guilty rendered by the jury in the above-entitled cause at the trial of same was contrary to the law and the evidence.

4. Because the court refused to allow counsel for the [fol. 53] defendants to cross-examine the witness for the prosecution police officer Ceballos as to the source of the information testified by him to have been received by him to the effect that the approaching automobile in which defendants were, was being used at that time by defendants in transporting liquors in violation of the Federal Prohibition Law, to which refusal attorneys for defendants noted an exception.

5. Because the court admitted as evidence at the trial of said cause the liquors alleged to have been seized by the police officer Ceballos, the court having previously at the trial refused to allow the attorney for the defendants to cross-examine the said officer Ceballos as to the source of the information testified by him to have been received that the defendants were approaching Carolina in an automobile used by them in transporting at the time liquors in violation of the Federal Prohibition Law, to which defendants noted an exception.

6. Because the court admitted improper evidence at the trial against the defendants to which defendants noted exceptions.

7. Because the court refused to admit proper evidence offered by defendants in their defense, to which refusal defendants noted exceptions.

8. Because the court allowed the United States Attorney, over the objection of the defendants' attorney, to cross-examine the defendant Manuel Santiago as to matters not properly related to the direct examination, and not pertinent in any way to his defense, and to the prejudice of the said defendant, to which attorney for defendant noted an exception.

9. Because the court denied the motion of the defendants made at the conclusion of the evidence for the prosecution, to oblige the United States Attorney to elect to proceed on the one or the other counts contained in the information, and not as to the other, to which denial the defendants noted an exception.

10. Because the defendants were placed in jeopardy and tried twice and convicted twice for the same offense.

11. And specifically as to the defendant Manuel Santiago [fol. 54] there was insufficient evidence to justify a verdict of guilty on either count contained in the information.

Wherefore, the defendants pray that the court set aside the judgment if same has been entered, and the verdict, and grant a new trial to both defendants, or in the alternative as to the defendant Manuel Santiago.

And now, in furtherance of justice and that right may be done, the defendants present the foregoing as their bill of exceptions in this case, and signed and certified by the judge, as provided by law.

E. B. Wilcox, Salvador Mestre, Attorneys for Defendants.

Notified with service of copy on December 2, 1925.

Jesus A. Gonzalez, Assistant United States Attorney.

To the District Attorney:

Please take notice that the foregoing bill of exceptions will be called for settlement on Saturday, December the fifth, at 9:00 a. m., or as soon thereafter as the parties may be heard.

_____, Attorneys for Appellant.

Order Approving Bill of Exceptions

Approved December 9, 1925.

Ira K. Wells, Judge.

In United States District Court

Order Enlarging Time—December 5, 1925

Upon motion of the defendant, the time for filing of the transcript of record in the Circuit Court of Appeals at Boston, Mass., is enlarged to and including December 23, 1925.

[fol. 55] In United States District Court

Supplemental Praecipe for Transcript of Record—Filed December 7, 1925

To the Clerk:

Please include in the transcript of the record of the above-entitled cause for the use of the United States Circuit Court of Appeals for the First Circuit, in addition to those papers and documents whose inclusion have been requested by the defendants' praecipe heretofore filed, all orders of the court extending the time within which the transcript of the record may be filed in the above-mentioned Circuit Court of Appeals.

San Juan, Porto Rico, December 7, 1925.

E. B. Wilcox, Of Counsel for Defendants.

Notified with delivery of a copy of the foregoing, December 7, 1925.

John L. Gay, United States Attorney.

In United States District Court

Supplemental Praecipe for Transcript of Record—Filed December 16, 1925

To the Clerk:

Please include in the transcript of the record of the above-entitled cause for the use of the Circuit Court of Appeals for the First Circuit, in addition to those papers and documents whose inclusion have been requested by the defendants' praecipes heretofore filed, the following:

1. Order of October 31, 1925, extending the May, 1925, Term into the November, 1925, Term.

2. Bill of exceptions.

San Juan, Porto Rico, December 16, 1925.

E. B. Wilcox, Of Counsel for Defendants.

[fol. 56] Notified with delivery of a copy of the foregoing, December 16, 1925.

John L. Gay, United States Attorney.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 57] In United States Circuit Court of Appeals for the First Circuit, October Term, 1922

No. 1922

Augustin Stagnola et al., Defendants, Plaintiffs in Error,

v.

United States of America, Defendant in Error

Error from the District Court of the United States for the District of Porto Rico

Before Bingham, Johnson and Anderson, J.J.

Opinion—December 18, 1926

Anderson, J.:

On an information in two counts,—the first for possession, and the second for transporting liquor contrary to

the National Prohibition Act. Both defendants, Segurola and Santiago, were found guilty. Santiago was fined $100 under the first count, $200 under the second count, and one-half the costs of the proceedings. Segurola was fined $200 under the first count, $300 under the second, and the other half of the costs.

The record shows facts as follows:

Ceballos was, on May 26, 1923, an officer in the insular police force. On that day, as the result of confidential information by telephone to the effect that Segurola, in a Buick automobile, was coming from Luquillo to Loiza, Ceballos took a Ford car and went out to meet the expected Buick. When he saw the Buick approaching he attempted [fol. 58] to block it, but Segurola maneuvered past him. Ceballos then gave chase, keeping Segurola in sight until they reached Carolina, where he passed Segurola, cut in front of and blocked him. Segurola thereupon backed his car, and collided with an electric post. Ceballos then arrested Segurola, searched his car, and found whiskey, brandy, vermouth and gin. These liquors were seized and were admitted in evidence.

(1) The first two assignments involve the defendants' right to be furnished by the government with a copy of the information. When the defendants were arraigned, they pleaded not guilty, and requested that a copy of the information be furnished them free of charge. This request was refused by the court "for the reason that I know of no law requiring the same."

At the close of the trial this same contention was reasserted, and an exception saved to the court's ruling: "That at the time that the defendants pleaded to the information, the information was in court and open to their inspection, and the defendants and their attorneys were informed by the court that they were at perfect liberty to examine said information in any way they desired or at perfect liberty to make copies thereof or to order the copies to be made and certified to by the clerk upon the payment of the fee as provided by law."

The defendants' contention is grounded on Section 2 of the Organic Act, 39 Stat. 951, which reads:

"That in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel for his de-

fense, to be informed of the nature and cause of the accusation, and to have a copy thereof, to have a speedy and public trial, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor."

Analogous provisions in the United States are the Sixth Amendment and Revised Statutes, Sec. 1033, which were construed by the Supreme Court in United States v. Van Duzee, 140 U. S. 169, 172, as follows:

"By the Sixth Amendment to the Constitution, 'in all criminal prosecutions, the accused shall enjoy the right [fol. 59] * * * to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.' By Section 1033, where a person is indicted for a capital offense a copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before his trial. There would appear to be a negative pregnant here, and it has accordingly been held that in cases not capital the prisoner is not entitled to a copy of the indictment at government expense. United States v. Bickford, 4 Blatchford 337; United States v. Hare, 2 Wheeler, C. C. 283, 288. Nor is he entitled to a list of witnesses and jurors. United States v. Williams, 4 Cranch, C. C. 372; United States v. Wood, 3 Wash. C. C. 440. There is no other statutory provision for carrying out the constitutional obligation of the government to inform the prisoner of the nature and cause of the accusation, or for summoning witnesses, or procuring the assistance of counsel, except that by Section 878 indigent defendants are entitled to have their witnesses subpoenaed at the expense of the government. There is, however, no general obligation on the part of the government either to furnish copies of indictments, summon witnesses or retain counsel for the defendants or prisoners. The object of the constitutional provision was merely to secure those rights which by the ancient rules of the common law had been denied to them; but it was not contemplated that this should be done at the expense of the government."

Probably a like construction should be given to Section 2 of the Organic Act. It is, however, unnecessary to rule

flatly on this question, for at most it was harmless error. The defendants were not misled or prejudiced. Under St. of 1919, 40 St. 1181 amending Sec. 269 Judicial Code, it is the duty of this court not to sustain such technical errors as do not affect the substantial rights of the parties.

It follows that the first and second assignments are without merit. Doubtless the better practice would be to conform to what defendants' counsel claims has hitherto been the custom in Porto Rico, that the government furnish counsel for accused persons a copy of the information or indictment.

[fol. 60] (2) In the third and fourth assignments the defendants complain because the seized liquors were admitted in evidence after the court had refused defendants' counsel the opportunity to cross examine Ceballos, the officer who seized them, as to the source of his information that Segurola was on the road in a Buick, presumably transporting liquor contrary to law.

The contention is that, without the previous telephoned information, there was no probable cause for the seizure, within the rules laid down in Carroll v. United States, 267 U. S. 132, 154. But this is not so.

Ceballos testified that he seized Segurola's car "because of confidential information which I received by telephone and also the manner in which Segurola acted in passing me at high speed"; and, on cross examination by the defendant's counsel, he reiterated and elaborated his statement that he "was suspicious because he (Segurola) threw his car against my car and because he ran away at great speed. * * * I say he tried to run away from me the first time I met him because he tried to bump his car on mine and it was going at great speed."

On this record there was, therefore, apart from any confidential communication, abundant evidence of probable cause for the seizure under the principles in the Carroll case, supra.

It is true that Ceballos on his direct testimony stated, without objection, that he "had information by telephone, confidential, to the effect that a Buick automobile driven by Segurola was coming." On cross-examination the following occurred:

"Q. 1. Now you have stated that you received confidential telephone information that there was a car coming with liquor, did you not?

A. Yes, sir.

Q. 2. Who gave you that information?

Mr. Gonzalez (Assistant United States Attorney): I object as they are the secrets of the police force, which should not be stated in a court of justice, and the stating of the source of such information would be against public safety.

The Court: The objection is sustained.

Mr. Mestre: I take exception."

[fol. 61] This ruling was right.

Voget v. Gruaz, 110 U. S. 311.

In re Quarles, 158 U. S. 532.

See also Worthington v. Scribner, 109 Mass. 487, one of Mr. Justice Gray's learned and exhaustive opinions reviewing most of the pertinent earlier authorities. The same principle is enunciated in State v. Fortin, 106 Maine 382.

Elrod v. Moss, 278 Fed. 123, 127.

Arnstein v. United States, 296 Fed. 946, 950.

The case is in that regard plainly distinguishable from Steen v. First National Bank, 298 Fed. 36, a learned opinion by Circuit Judge Sanborn for the Eighth Circuit Court of Appeals. That was a suit for malicious prosecution; it appeared that the bank officials, through whom the plaintiff claimed a groundless prosecution had been instituted, had at the preliminary examination of Mrs. Steen, voluntarily testified to the confidential communications made by them to the prosecuting officer. Under these circumstances, that learned court held that the privilege was personal and had been waived. But that court recognizes (298 Fed. 40), that if the privilege had been seasonably claimed it would have been the duty of the court to sustain it. The case is, therefore, on analysis of the facts, an authority for the government and not for the defendants, in the instant case.

(3) The fifth assignment relates to the extent of the cross-examination of Santiago, who took the stand in his own behalf and testified to the effect that he had no association with Segurola except to ask him to take him in his

car over to San Juan; that he saw and knew of no liquor in the car. On cross-examination the United States Attorney was permitted to show that Santiago was in Fajardo in company with a woman of doubtful character. But, while there was objection made to this cross-examination, no exception was saved.

It follows that this assignment cannot be sustained, even if otherwise this court might be constrained to hold Santiago prejudiced.

[fol. 62] (4) The eighth assignment is to the effect that there was no sufficient evidence to convict Santiago. But he took the stand in his own behalf, and it was for the jury to say whether, in the light of his appearance and of all the circumstances of the case, his story that he was a mere passenger, without knowledge of or participation in the illegal transportation, was true or false.

(5) But the sixth and seventh assignment of errors relate to the conviction and sentence under both counts, for possessing and transporting the same liquor. In that regard we think this case falls under the familiar principle illustrated in such cases as Schroeder v. United States, 7 Fed. (2d) 60, 65; Page v. United States, 278 Fed. 41, 45; Friedman v. United States, 13 Fed. (2d) 632; and that there was no such separate possession and transportation as to constitute two offences. It follows that the convictions under the first count for possession must be reversed, and as to the second count, for transportation, affirmed.

The convictions under the first count are reversed and those under the second count are affirmed, and the case is remanded to the District Court for further proceedings not inconsistent with this opinion.

IN UNITED STATES CIRCUIT COURT OF APPEALS

DISSENTING OPINION

BINGHAM, J. (dissenting):

The question as to which I desire to record my dissent is the one relating to the cross-examination of the prohibition officer who was called as a witness by the Government. The

record shows that this witness, having been called by the Government and having testified to the receipt of a telephone communication just prior to the seizure and arrest of the defendant and what that communication was, when asked on cross-examination from whom he received the communication, was not allowed to state the name of the person, on the ground that the communication was privileged, and the defendant excepted. I agree that the communication was a confidential one, which the Government, and it alone, was privileged to disclose or withhold. Voged v. Grnaz, 110 U. S. 311, 316; Worthington v. Scribner, 109 Mass. 487. My position is that the Government, having [fols. 63 & 64] called the officer to whom the communication is said to have been made and required him to state what the communication was, thereby waived its privilege and subjected the witness to cross-examination upon the subject matter of the communication, including the name of the person by whom it was made; that the Government could not require the officer to disclose so much of the matter as was helpful to it, and then shut the door as to any further inquiry by the defendant relating to the communication; that having required a partial disclosure, or rather one substantially covering the entire matter, it waived its privilege and the defendant became entitled to a full disclosure. Regina v. Richardson, 3 F. & F. 693; Worthington v. Scribner, 109 Mass. 487 at 492.

The communication, to the extent that it was given, was important evidence for the Government and in fact the only material evidence bearing upon the legality of the seizure and arrest made by the officer, viz: whether he had probable cause for stopping and searching the defendant's automobile and making the arrest, a vital issue in the case. The evidence which the witness (the officer making the seizure) gave may, or may not, have been truthful: he may, or may not, have received the communication and, if he received it, it may not have been obtained from a person worthy of credit. If it was not received from a person worthy of credit, it could be found that the officer acted without probable cause in making the seizure; and if the name of the person said to have made the communication had been given and he had been called as a witness and denied making the communication, it might reasonably be

found that the communication was not made, that probable cause for the seizure did not exist, and that the seizure was illegal. Cross examination is an essential method in the trial of a cause of ascertaining the truth of testimony given in direct examination, and the denial of that right in this case was so plainly prejudicial as to warrant a new trial.

[fols. 65-70] Petition for rehearing covering five pages omitted from this print. It was denied and nothing more by order of January 26, 1927.

[fol. 71] In United States Circuit Court of Appeals

JUDGMENT—December 18, 1926

This cause came on to be heard October 22, 1926, upon the transcript of record of the District Court of the United States for the District of Porto Rico, and was argued by counsel for the defendant in error, plaintiffs in error submitting on brief by leave of court.

Upon consideration whereof, it is now, to wit, December 18, 1922, here ordered, adjudged and decreed as follows: The convictions under the first count are reversed and those under the second count are affirmed, and the case is remanded to the District Court for further proceedings not inconsistent with the opinion passed down this day.

By the Court.

Arthur L. Charron, Clerk.

In United States Circuit Court of Appeals

ORDER DENYING REHEARING—January 26, 1927

No judge who concurred in the opinion announced December 18, 1926, desiring a rehearing, It is ordered that the petition for rehearing filed January 25, 1926, be, and the same hereby is denied.

By the Court.

Arthur L. Charron, Clerk.

[fol. 72] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 73] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 25, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6804)